



Comptroller General  
of the United States

335242

Washington, D.C. 20548

## Decision

**Matter of:** Docusort, Inc.  
**File:** B-254852.2  
**Date:** February 22, 1995

Michael E. Waldeck, Esq., and William J. DeBauche, Esq., Niewald, Waldeck & Brown, for the protester. Delia Downer, United States Department of Agriculture, for the agency. Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest against award on ground that contracting officer was biased against protester and intended to favor another competitor for award is denied where record shows that the alleged bias did not result in any prejudice to the protester's competitive position.

### DECISION

Docusort, Inc. protests the award of a contract to Lee Associates under request for proposals (RFP) No. KCMO-06-N-93, issued by the United States Department of Agriculture (USDA) for all labor, equipment, tools, materials, supervision and services necessary to operate the mail room located at the Agricultural Stabilization and Conservation Service building in Kansas City. Docusort, the incumbent contractor for this requirement, contends that the award was selected as a result of the contracting officer's bias against Docusort.

We deny the protest.

On January 25, 1994, our Office sustained a protest filed by Docusort which alleged that its proposal had been improperly rejected by USDA as technically unacceptable; in our decision, we explained that because Docusort was a small business, and because its proposal was rejected for alleged noncompliance with responsibility-type technical factors--a matter over which the Small Business Administration (SBA) has exclusive jurisdiction, see 15 U.S.C. § 637(b)(7) (1988)--USDA could not properly exclude Docusort's proposal from consideration without first referring the matter to SBA

for review under SBA's certificate of competency procedures. Docusort, Inc., B-254852; Jan. 25, 1994, 94-1 CPD ¶ 38.

The RFP provided for a two-step evaluation process. First, offerors were to submit a technical proposal; next, all offerors whose proposals were found to be technically acceptable would be asked to submit price proposals. The solicitation contemplated the award of a fixed-price contract for a base year with 3 option year periods, and provided that award would be made to the lowest-priced, technically acceptable offeror.

As a result of our January 29 decision sustaining its original protest, Docusort's proposal was reinstated in the competitive range, and the company was asked to submit a price proposal. For their price proposals, offerors were asked to complete and submit the solicitation's pricing schedule set forth at section B, which contained eight contract line item numbers (CLIN) for each year of contract performance.

On February 11, Docusort submitted a price proposal in the amount of \$1,774,409. The only other offeror in the competitive range--Lee Associates--submitted a price proposal in the amount of \$1,767,373, and was awarded the contract as the lowest-priced, technically acceptable offeror.

On November 2, Docusort received a copy of a memorandum written by the contracting officer for this procurement which indicated that he proposed to add approximately \$8,000 to the awardee's offered price to cover "phase-in" or start-up costs, representing the cost to the awardee of taking over the mail room operations from Docusort. Despite the contracting officer's initial proposal to do so, the awardee's contract price was not increased. Docusort alleges that this decision reflects bias on the contracting officer's part; specifically, Docusort argues, since addition of \$8,000 to the awardee's price would make Docusort's price low, the contracting officer decided not to add the costs in order to deprive Docusort of the award. Docusort basis its allegation of bias on conversations between the president of Docusort and unnamed agency employees who, Docusort asserts, told the president that the contracting officer wanted to have Docusort replaced as the contractor operating the mail room, and said that the contracting officer had advised other agency employees that Docusort "would not be allowed to bid" on the replacement contract.

On November 10, based on the above-referenced information, Docusort filed this protest with our Office alleging that the contracting officer was biased against Docusort and

maintaining that the contracting officer had "deliberately left out [the awardee's] phase-in costs" when reviewing each price proposal "so that Lee Associates would be the low bidder and so that Docusort would not be awarded the contract."

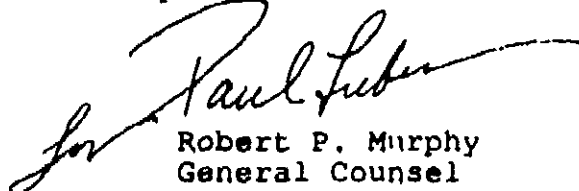
When a protester alleges bias on the part of a contracting official, the record must establish that the official intended to harm the protester since government officials are presumed to act in good faith. Charles Trimble Co., B-250570, Jan. 28, 1993, 93-1 CPD ¶ 77. Our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Ameriko Maintenance Co., B-253274; B-253274.2, Aug. 25, 1993, 93-2 CPD ¶ 121. Furthermore, in addition to producing credible evidence showing bias, the protester must demonstrate that the agency bias translated into action which unfairly affected the protester's competitive position. Technology Vectors Inc., B-252518.2, June 6, 1994, 94-1 CPD ¶ 345. That is, the protester must demonstrate that the allegedly biased official exerted improper influence in the procurement on behalf of the awardee or against the protester. Id. In this case, the record contains no evidence of prejudice to Docusort's competitive position as a result of the alleged bias.

As noted above, this solicitation contemplated the award of a fixed-price contract; unlike a cost-reimbursable type contract, under a fixed-price contract, the government's liability is fixed and it is the contractor's responsibility to perform fully as required at its offered price. See Culver Health Corp., B-242902, June 10, 1991, 91-1 CPD ¶ 556. Thus, even if the contracting officer had acted with bias against the protester when he proposed increasing the awardee's contract price, the contracting officer was not legally permitted to--and in fact did not--add this fee to the awardee's proposed price. Similarly, with respect to the eventual determination not to add in or evaluate any phase-in costs, the solicitation did not include any CLINs for phase-in costs; accordingly, such costs could not be considered in the evaluation of offers. See MagneTek Nat'l Elec. Coil, B-249625, Dec. 4, 1992, 92-2 CPD ¶ 392.

Accordingly, the record establishes that the contracting officer's alleged bias did not result in any prejudice to the protester. Rather, the awardee received contract award as the lowest-priced, technically acceptable offeror--as directed by the terms of the solicitation. Prejudice is an essential element of a viable protest; since the contracting

officer's alleged bias did not prejudice Docusort's competitive position, we deny the protest.<sup>1</sup> See Tek Contracting, Inc., B-245590, Jan. 17, 1992, 92-1 CPD ¶ 90.

The protest is denied.



Robert P. Murphy  
General Counsel

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<sup>1</sup>As noted above, the protester based its allegation of bias in part on statements allegedly made by agency employees to the president of Docusort. Because it was apparent from the record the alleged bias could not have prejudiced the protester, there was no need to explore the matter further.